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In re Application of	:	DECISION ON
Ray BLOTTEAUX et al	:	
Application No.: 10/590,701	:	
Int. Application: PCT/CA05/000309	:	
Int. Filing Date: 25 February 2005	:	REQUEST UNDER
Priority Date: 26 February 2004	:	
Attorney's Docket No.: 1912-0353PUS1	:	
For: SPORTS APPARATUS... OF MAKING SAME	:	37 CFR 1.497(d)

This is a decision on applicants' "Petition to Correct Inventorship Under 37 CFR 1.497(d)" filed on 26 October 2007, to add inventor Michael Thomas BENNETT and delete joint inventors Stephen MURPHY and John PAGOTTO in the executed declaration. The processing fee of \$130.00 has been charged to Deposit Account No.: 02-2448.

BACKGROUND

On 25 February 2005, applicant filed international application No. PCT/CA05/000309 claiming a priority date of 26 February 2004. The deadline for entry into the national stage by paying the basic national fee in the U.S. expired as of midnight of 26 August 2006.

On 25 August 2006, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee, but no executed declaration was filed at such time.

On 26 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date. "The current oath or declaration does not comply with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date." The notice also indicated that the items set forth above must be submitted within two (2) months from date of this Notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

DISCUSSION

A submission under 37 CFR 1.497(d) must include:

- (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (2) the fee set forth in § 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see 37 CFR §3.73(b) of this chapter).

A review of the application file reveals that applicants have satisfied item (2) but not items (1) and (3) under 37 CFR 1.497(d).

With respect to item (1), the statements submitted on 26 October 2007 by Michael Thomas BENNETT, Stephen MURPHY and John PAGOTTO are sufficient because the statements state that the error in inventorship occurred without a deceptive intent. However, the executed declaration filed on 26 October 2007 is defective because there are alterations on it - lines across the information on it and new information are on the side tab. Any alteration made after the signing of an oath or declaration must be supported by a supplemental oath or declaration under §1.67. Note 37 CFR §1.52.

With respect to item (2), the processing fee of \$130.00 has been charged to the Deposit Account.

With respect to item (3), Sport Maska Inc, the assignee, consents to the correction of inventorship to the above application; however, although it filed a statement under 37 CFR 3.73(b) the copy of the assignment was not found with the filing of the petition. To establish the right of the Assignee to take action, applicants must submit a copy of the executed assignment or specify the reel and frame number. Note MPEP 324 and 37 CFR 3.73(b).

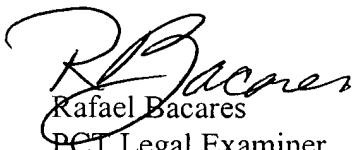
Accordingly, the requests are deemed to satisfy requirements (1), (2), and (3) under 37 CFR 1.497(d).

CONCLUSION

For the reasons above, the request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.497(d)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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